

CONWAY PLANNING BOARD

MINUTES

MARCH 2, 2000

A meeting of the Conway Planning Board was held on Thursday, March 2, 2000, beginning at 7:05 p.m. at the Conway Town Office in Center Conway, NH. Those present were: Chair, Catherine Woodall; Selectmen's Representative, Gary Webster; Vice Chair, Sheila Duane; Stacy Sand; Arthur Bergmann; Robert deFeyter; Planning Director, Thomas Irving; and Recording Secretary, Holly Meserve.

REVIEW AND ACCEPTANCE OF MINUTES

The Minutes of February 17, 2000, should be amended as follows: page 5, paragraph 2, line 4, should read, "...go through whether the building does meet all..."; page 5, paragraph 4, line 4, should read, "...if you increase or decrease..."; and page 6, paragraph 5, line 3, should be added, "...left alone.". Ms. Woodall stated that you could go from a business suit to a business suit, which would be an example of change. Ms. Duane asked does the...".

Ms. Sand made a motion, seconded by Ms. Duane, to approve the Minutes of February 17, 2000, as amended. Motion unanimously carried. (Note: Mr. deFeyter's master plan schedule was omitted in the draft copy, but has been included in the final copy).

WILLIAM FOWLE – BOUNDARY LINE ADJUSTMENT AND TWO (2) LOT SUBDIVISION REVIEW (1999 TAX MAP 275, PARCEL 18 – OLD TAX MAP 8, PARCEL 41) FILE #S00-02

Ronald Briggs of E.R. O'Brien Land Surveyors appeared before the Board. Mr. Irving reviewed his Planning Staff Report (attached). Ms. Sand made a motion, seconded by Ms. Duane, to accept the application of William Fowle as complete for Subdivision Review. Motion unanimously carried.

Mr. Bergmann asked if the lots are not to be developed. Mr. Irving stated that the one lot being subdivided [18-1] would not be developed. Mr. Bergmann stated if the Board grants the waiver request it would be applicable for all the lots. Mr. Irving stated that the waiver request is for Lot 18-1. Mr. Briggs stated that the other lots already exist and the regulations do not apply. Ms. Woodall stated that you are making a new lot of record. Mr. Briggs stated that the waiver request is for lot 18-1 only. Mr. Briggs stated that the regulations do not apply for a merger, but for a subdivision. Ms. Woodall stated when you merge lots you are creating a new lot. Mr. Irving stated that you are combining lots with another lot of record. Mr. Bergmann stated that it becomes a different lot of record. Mr. Irving stated that one of those lots would remain.

Mr. Briggs asked why the regulations would apply on something that was being merged. Ms. Woodall stated that we could deal with the one lot. Mr. deFeyter asked what is the purpose of this and asked what do you want to do on lot 18-1. Mr. Briggs stated that an abutter wishes to purchase the lot to protect the wetland. Mr. deFeyter asked why not say that in the review. Mr. Briggs stated that it was meant to address the regulations as it is not going to be used for building purposes. Mr. deFeyter stated that it could be used for agricultural purposes. Ms. Woodall agreed and stated that that is fine. Mr. deFeyter stated that it does not cover all the areas. Ms. Woodall stated that she thinks the statement is fine.

Ms. Woodall read a waiver request for Article 131-24.K., O., Q., S., T., U., and V for lot 18-1. **Mr. Bergmann made a motion, seconded by Ms. Sand, to approve the waiver request for Article 131-24.K., O., Q., S., T., U., and V for lot 18-1.** Ms. Sand stated that the new lot of record is all wetlands and cannot be built on. Ms. Sand stated that they cannot build within so many feet of a wetland and this is a mapped wetland. Mr. Bergmann stated that they do not want to build on this lot. Mr. deFeyter stated that this wouldn't preclude them from putting a barn on the property. Mr. Irving stated not necessarily, but they could put a barn there today. Mr. Irving stated that they would be permitted to use the land for uses permitted, other than those stipulated, as long as they meet all of the other regulations.

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Mr. deFeyter stated that they could put in an agricultural operation and we are waiving water shed. Mr. deFeyter asked what if it becomes a problem. Mr. Irving stated anything other than residential would require site plan review and would have to satisfy the requirements. Ms. Woodall asked for public comment; there was none. **Motion unanimously carried.** Mr. Bergmann made a motion, seconded by Ms. Sand, to approve the Boundary Line Adjustment and two-(2) lot subdivision for William Fowle. Motion unanimously carried. The plans were signed.

OTHER BUSINESS

Building Inspectors Report – Peterson Petroleum (1999 Tax Map 265, Parcel 46 - Old Tax Map 33, Parcel 75) File #MR00-02: Luigi Bartolomeo appeared before the Board. Mr. Irving submitted the attached letters from the Building Inspector. Mr. Bartolomeo stated that two windows are being built and three were approved. Mr. Bergmann asked why the third window is not being constructed. Mr. Bartolomeo stated there was a change in the field. Mr. Bergmann stated that the change did not come to the Board. Mr. Bartolomeo stated that there is a change, but they still meet the 5% window requirement. Mr. Bergmann stated that is not what is approved.

Mr. Bartolomeo asked what is the process for changes. Ms. Woodall stated that she does not have a problem with the two windows, but there is a process for finalizing construction plans. Ms. Duane stated that field changes do happen and if you want a window looking into a silver box [cooler] then they will put the window in. Ms. Sand stated that she has a problem with approving plans if they are not going to be followed. Ms. Sand stated that she wouldn't have a problem with the change if the applicant had come to the Board.

Mr. Webster stated that their conditional approval expired on their first application and the Board was accommodating by giving them a brief meeting the second time the application came before the Board. Mr. Webster stated that the window issue could have been addressed at the second hearing. Mr. Bartolomeo stated that it is a change, but it doesn't put the applicant in violation of any guidelines. Mr. Bartolomeo stated that they still meet the 5% window requirement. Mr. Bergmann stated that they are not building what was approved. Mr. Bergmann stated that he is appalled that the Board is being asked about this change so late in the game.

Ms. Woodall asked doesn't this change have to go through a formal review by the Board. Mr. Irving stated the applicant either has to install the window per the plans or come back to the Board for a change. Mr. Bartolomeo asked where do the regulations state that. Mr. Irving stated that the information on the site plan that the approval was based on had three windows. Mr. Bartolomeo stated that this is not a site issue. Mr. Bergmann stated that his signature is on the plans and the applicant is not building what was signed. Mr. Bartolomeo asked if the applicant builds it exactly per the plans, except they install an outside plug do they need to come back to the Board. Mr. Bartolomeo asked where do you draw the line. Mr. Bartolomeo asked if it is the Board's opinion that if we did not show it then you cannot build it.

Mr. Bergmann stated that the applicant is changing the whole look of the building. Ms. Duane asked what are we doing here by saying this. Ms. Duane asked what happens if they have a certificate of occupancy and then they take the window out. Ms. Woodall stated that you couldn't change the exterior of a building. Ms. Duane stated that they still meet the window requirement. Ms. Sand stated that it then falls onto the Board of Selectmen and town staff because they are in violation of their site plan approval. Ms. Duane stated that they wouldn't be in violation of the architectural guidelines. Ms. Woodall stated that they are in violation of what was approved. Ms. Sand stated that they knew when they came before the Board what they wanted to build. Ms. Woodall stated if you make changes you need to come back to the Board.

Mr. deFeyter stated that no one wants to go to absurd lengths, but when you come in and provide a set of plans that is what the Board expects on the other end. Mr. deFeyter stated that the applicant needs to come back before the Board. Mr. deFeyter stated if the applicant wants some flexibility on the job site then the Town should have the same flexibility. Mr. deFeyter stated that we have to be reasonable on both sides. Mr. deFeyter stated if something comes up then you need to come back to the Board and we will try to resolve it. Mr. deFeyter stated that we are not looking at the 5% requirement, but the totality of the project.

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Mr. Bartolomeo stated that there is no dispute that there was a change, but by the time the applicant gets to the Planning Board the building is conceptual. Mr. Bartolomeo stated that it is not cast in concrete. Mr. Bartolomeo stated to have the building entirely designed usually does not happen. Mr. deFeyter stated that we have a process for a conceptual review in order to discuss general terms of what they want to do. Mr. deFeyter stated that when they want to come for approval the project has to be pretty far down the line.

Mr. Irving stated that we might need a mechanism to review minor architectural modifications. Mr. Irving stated with the way our regulations are set up you would need a public hearing. Mr. Bergmann stated that this could have been handled under a staff review, but they did not go through that process as they just went ahead and built it. Mr. Irving stated that we have not legitimately set up a staff review. Ms. Sand stated that before a staff review did not require notification and asked if it now would require abutter notification. Mr. Irving answered in the affirmative and stated that you have to follow the same process as the Planning Board.

Mr. deFeyter stated that he agrees that public notice has to be given, but post it rather than notice every abutter. Ms. Sand stated that listed on the agenda and published in the newspaper is a form of public notice. Mr. Bergmann referred to the Building's Inspector's memo and the revision date of the architectural drawings. Mr. Bartolomeo stated that not changing the date is a technical error that he is guilty of and not an act of bad faith on the owner's part. Ms. Woodall polled the Board to see if this application should come back before the Board. Ms. Sand, Mr. deFeyter, Mr. Bergmann, Ms. Woodall and Mr. Webster all agreed and Ms. Duane disagreed.

Ms. Sand asked if staff could research the fees of a staff review and other reviews. Mr. deFeyter stated that the State law does not recognize staff reviews, but site plan reviews. Mr. deFeyter stated to put it into the staff review you would have to meet certain requirements. Mr. deFeyter stated that we have to have a committee of technically qualified town staff who live in the community on the committee. Ms. Sand stated that she would like to change our regulations so things are under a staff review. Ms. Sand asked what is the process to make that happen. Mr. Irving stated that you would have to bring together your ideas on how to manage it, address changes to site plan review regulations, and then hold a public hearing.

Ms. Sand asked if she would give the proposed changes to the Chair to schedule a time for discussion and then the Board will determine if they wish to hold a public hearing or not. Ms. Woodall agreed. Ms. Sand stated that she wants to add items under the "Not Applicable" section of the ordinance. Ms. Woodall stated that the BOCA code states that 70 square feet is habitable. Mr. Bartolomeo reviewed other changes to the plans.

RSA's: Ms. Woodall reviewed the attached sheet regarding the RSA's. Ms. Woodall stated that there is a distinction between enabling legislations and procedure legislations.

Abutter Notification: Mr. Irving stated at a previous meeting the Board discussed the noticing procedure. Mr. Irving referred to RSA 356-B:3 and RSA 356-B:40 (attached). Ms. Woodall asked if the regulations should be amended. Mr. Irving answered in the affirmative. Mr. Bergmann made a motion, seconded by Ms. Duane, to have Mr. Irving draft an amendment to address noticing in the Site Plan Review and Subdivision Regulations as well as review the timeline. Motion unanimously carried.

Master Plan: Mr. Irving stated at the February 24, 2000 work session, the Board prepared an invitation form, which we are currently trying to distribute. Mr. Irving stated that we would make them available at town meeting when people are exiting the polls. Mr. Irving stated that we would also be contacting local groups, merchants and just trying to get the word out. Ms. Sand stated that we were going to have a sign up sheet on who will hand these out at the polls. Mr. deFeyter stated that he has concerns with this as there are some issues on the warrant that pertain to the master plan. Ms. Sand stated that this is after the vote. Mr. deFeyter stated that we should check with the Town Attorney. Mr. Irving stated that he would check with the Town Attorney.

Mr. deFeyter stated that it is the Planning Board that has the responsibility for the master plan and asked if the Board accepted the form that is being used. Mr. Webster answered in the affirmative. Mr. deFeyter

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stated that he did not see a motion in the minutes of February 24, 2000. Mr. deFeyter stated that he is a little concerned with things just hopping up. Mr. Irving asked if he could get a position from the Board and perhaps a motion if each and every material used to develop the master plan has to be approved by the Board. Mr. Bergmann stated that he would like to continue this when the new Board is sitting. Ms. Duane made a motion, seconded by Ms. Sand, to use the form developed by Mr. Irving and discussed on February 24, 2000. Motion carried with Mr. Bergmann and Mr. deFeyter abstaining from voting.

March 23, 2000 Work Session: After a brief discussion, it was determined that the work session was to be on March 30, 2000. After further discussion, the Board agreed to have a public hearing on March 30, 2000 if there were enough applications.

Recognition: Ms. Sand recognized Ms. Woodall and Ms. Duane and thanked them for their contributions. Ms. Sand wished them both good luck on the up coming election. Ms. Woodall thanked the Board and staff as well as the press for keeping the public informed. Ms. Woodall thanked Ms. Meserve. Mr. deFeyter stated that he appreciated Ms. Woodall and Ms. Duane's hard work. Mr. Bergmann stated that we owe both Ms. Woodall and Ms. Duane gratitude. Mr. Bergman stated that he hopes Ms. Woodall and Ms. Duane think they have done some good and continue to do so in their future endeavors.

Legal issue denied: Ms. Woodall stated that at a previous meeting there was discussion on a legal issues that was denied and that legal issue was the finding of facts for the sexually oriented businesses. The Board asked staff to obtain a copy of the denial.

Building/Zoning Procedures: Mr. deFeyter referred to the attached procedures and discussed fines. Ms. Woodall stated RSA 31:39 grants the right to impose fines. Ms. Woodall stated that each day is considered an offense. Ms. Woodall stated that these fines could be attached to the property like a lien. Ms. Woodall stated that it is a strong method of enforcement and with some people you have to use that method. Mr. Bergmann stated our regulations call for fines. Mr. Webster stated that part of the discussion was that we may not necessarily eliminate the fines, but be used as a last resort.

Mr. Bergmann stated if we are not going to follow the regulations then they [the fine section] should be removed. Mr. deFeyter stated that the purpose is not to fine people, but to come into compliance. Mr. deFeyter stated he doesn't want to see us go through this process, not say anything about fines, and then end up fining them when you haven't told them. Mr. deFeyter stated that we should say there would be consequences. Mr. deFeyter stated that there should be a process to keep the Board apprised of what is going on.

Meeting adjourned at 9:20 p.m.

Respectfully Submitted,

Holly L. Meserve
Recording Secretary